

ST 02-1

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**ABC DEVELOPMENT CORP.,
APPLICANT**

No: 01 ST 00

Sales Tax Exemption

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Bernard Shelton, on behalf of ABC Development Corporation; Mr. George Foster, on behalf of the Illinois Department of Revenue.

SYNOPSIS: On April 3, 2001, ABC Development Corporation (hereinafter “ABC” or “applicant”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of retailers’ occupation tax as set forth in 35 ILCS 105/1 *et seq.* On April 10, 2001, the Department denied ABC’s application. On April 23, 2001, ABC protested the Department’s decision and requested a hearing, which was held on October 31, 2001, with testimony from Mr. John Doe, president, founder and director of ABC.

The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department’s denial be affirmed.

FINDINGS OF FACT:

- 1.The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s denial of exemption dated April 10, 2001. Tr. pp. 7-10; Dept. Ex. No. 1.
- 2.ABC has been in existence since 1990. ABC’s “Mission Statement” states that it “is committed to the redevelopment, economic and educational revitalization of the ABC, and to serve as a catalyst to the other communities in District 27...” Tr. pp. 12-13; Applicant’s Ex. No. 1.
- 3.ABC operates under a Constitution and set of bylaws adopted September 23, 1990 which state that its purpose, *inter alia*, is to “promote, encourage or foster neighborhood or community economic redevelopment and overall community improvement.” Tr. pp. 12-13; Applicant’s Ex. No. 2.
- 4.ABC offers computer training, free of charge, at beginning, intermediate and advanced levels. ABC also offers free tutoring to GED students, and is currently tutoring 18 students who will take the GED exam in December. Tr. pp. 14-16.
- 5.ABC does not have capital, stock, or shareholders, and does not pay dividends. Tr. pp. 17-18.

6.ABC has received two grants from the Illinois Department of Commerce and Community Affairs totaling \$57,000. The grants were requested to foster programs for neighborhood and community improvement. “These programs will consist of educational workshops in the following areas: drug abuse, gang control, prostitution, substance abuse, homeless people, high school drop outs, abused women and children, work programs for the unemployed, upkeep of the neighborhood streets and alleys that are not maintained by the city and major contact with the grass roots people of the community.” Some of the grant money was requested for a study to determine the feasibility of building a community/cultural center in ABC. Tr. pp. 19-20, 30-33; Applicant’s Ex. Nos. 3 and 4.

7.ABC’s “Expected Budget” for the year 2000-2001 shows a monthly expenditure of \$578 for “Director,” \$300 for “Rent” and \$555 for “Financial Consultant.” The consultant maintains ABC’s financial records including cash expenditures, tax records and bank statements. Tr. pp. 20-22, 25-26; Applicant’s Ex. No. 5.

8.No financial statements, showing actual expenditures, were provided by ABC at the evidentiary hearing.

9.ABC publishes a monthly calendar that is distributed in the community. The calendars for March through June, 2001, show classes and seminars, *inter alia*, in computers, GED, English and math skills. Other classes are concerned with general life skills, such as resume writing, property upkeep, scholarship application, and grant proposal writing. Some classes are social in nature or of limited interest such as music composition, jazz

workshop, piano improvisation, chess and bridge. Tr. pp. 22-27;
Applicant's Ex. No. 6.

10. All classes are free and are offered at beginning, intermediate and advanced levels. There are usually 18-20 people per class. All age groups attend classes and there is a computer class for children aged 5 to 9. Classes are taught by employed and retired college professors, who are paid a small stipend. Tr. pp. 27, 35-36, 44.
11. Classes are held at a former Board of Education building at 1234 Anywhere. A state representative has a congressional office in this building, which is also used for other community affairs. ABC does not pay rent for use of the building. Tr. pp. 33-34, 38.
12. ABC's office is located in Mr. Doe's residence at Somewhere Street. Tr. p. 37.
13. ABC has six volunteers that perform services for the organization, including office work and security. Tr. pp. 30-41.
14. ABC advertises through flyers, distributed in the community and in churches, and posted in stores. Tr. p. 46.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions:

The applicant seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2d Dist.1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In Methodist Old People’s Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2d Dist. 1995). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and

balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden." *Id.* at 469.

Applying the guidelines from Methodist Old People's Home, I find that the applicant has not presented clear and convincing evidence that it is, in fact, a charitable organization. I am unable to conclude, based on the testimony and evidence presented, that ABC "reduces the burden on government," one of the guidelines from Methodist Old People's Home. Counsel for ABC stated in closing argument that "some of the people that [ABC] helps, they're keeping off welfare. They're helping them to get jobs. They're helping them to stay out of jail where they would be a burden on the State. ... They are saving the State money and they're doing it themselves." Tr. p. 53.

However, no statistics were presented at the evidentiary hearing as to how many people had availed themselves of ABC's classes and subsequently found jobs, stayed off welfare or stayed out of jail. Mr. Doe testified that a 38 year old man with a family of five was unable to keep a job because his employers always learned about a minor criminal matter in the man's past and fired him. The man learned through ABC how to have his criminal record sealed. "In the next three weeks, he had a job." Tr. p. 25. Additionally, Mr. Doe testified that he noticed that there "were about five known gangbangers in the [GED] class... And after class they came up and really showed appreciation of being in class. So, otherwise, we would never reach them." Tr. p. 44.

Whereas ABC obviously performs some worthwhile services for the community, I cannot conclude that the burdens of government are "lessened" based on the anecdotal testimony about a few of the individuals helped. There was no testimony as to how many people had attended classes at ABC, which has been open since 1991, and whether ABC did any follow-up as to how successful the people were after taking classes. Mr. Doe

testified that two grants totaling \$57,00 from the State of Illinois' Department of Commerce and Community Affairs are currently the "sole basis" of ABC's funding. Tr. p. 19. I also have to question whether ABC is reducing a burden on the State of Illinois when the State currently provides ABC with all of its funding. If any burden on the State is lessened, it must be balanced against the burden on the State of providing ABC's funding.

Additionally, it must be noted that several of the classes offered by ABC are social in nature or of interest to only a limited number of people. ABC offers classes and seminars, *inter alia*, in "Grant/Proposal Writing," "Jazz Workshop," "Chess Club," and "Bridge." There was no testimony at the evidentiary hearing as to how these classes lessen the burden on government. If ABC did not provide these classes, public interest would not dictate that the State of Illinois meet the demand for these classes.

I am also unable to conclude that ABC does not provide gain or profit in a private sense to any person connected to it. ABC did not submit audited financial statements or cash expenditures as evidence. Although ABC received \$57,000 from the State of Illinois, no accounting of these funds was offered. The funds received from the State were designated to be used for educational workshops and for a study to determine the feasibility of building a community/cultural center in ABC. Applicant's Ex. Nos. 3 and 4. These funds currently represent ABC's sole source of funding and without an accounting, I am unable to determine how much was spent on computer instruction and GED classes and how much was spent for other purposes.

The only financial information submitted by ABC was an "Expected Budget" for years 2001-2002. This budget shows a monthly payment of \$578 to the Director, \$555 to a Financial Consultant and \$300 for Rent. Taxpayer's Ex. No. 5. Mr. Doe, the Director

of ABC, testified that he uses the \$578 for incidental expenses such as parking. “People come in and do little seminars. We like to give them a little food on the side... People pass out flyers in the community for me. I give them a few dollars, not much, but [it] mostly come[s] from [the \$578].” Tr. p. 21. No accounting of the monthly \$578 paid to Mr. Doe was offered into evidence. The \$578 represents 29% of ABC’s monthly budgeted expenditures.

Additionally, ABC pays \$555 monthly to a “Financial Consultant.” According to Mr. Doe, the consultant “make[s] sure everything that comes in here go[es] where it supposed to go... And any[time] that money goes out, he keeps a watch of our tax record and all taxes paid and all the bank statements, reconciled. All receipts that we have, he keeps track of all that.” Tr. pp. 21-22. In light of Mr. Doe’s testimony that the consultant “keeps track” of ABC’s receipts, and makes sure that expenditures go where they’re “supposed to go,” actual financial statements, including a detailed accounting of Mr. Doe’s \$578 monthly payment, should have been submitted.

The “Expected Budget” also contains a \$300 payment for “Rent”. Mr. Doe was asked in cross-examination if ABC pays him rent for its use of office space at his home at Somewhere Street. He responded: “That’s my home. So I put that back into the organization. Like I said before, I’m retired and I don’t need to make any money off that. So we use this there. The money that we rent, we just put back in the organization so we can buy the other stuff.” Tr. p. 37. When asked later if he “actually received any rent,” Mr. Doe responded “No. No. No.” Tr. p. 37. Mr. Doe also stated that ABC does not pay rent for use of the classroom building at 1234 Anywhere Street. Tr. p. 38. Mr. Doe’s testimony is inconsistent with the \$300 payment for “Rent” in the Expected Budget. Neither the Department’s nor Taxpayer’s counsel asked Mr. Doe for an explanation of

this \$300 payment, which represents 15% of ABC's monthly budgeted expenditures. Without actual financial statements, including an accounting of both the \$578 payment to Mr. Doe and the \$300 for "Rent," I am unable to conclude that ABC does not provide gain or profit in a private sense to any person connected to it.

In analyzing the guidelines under Methodist's Old People's Home, I note that some factors weigh in ABC's favor. ABC does not have capital stock or shareholders and does not pay dividends. Tr. pp. 17-18. Mr. Doe testified that ABC was exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, although no documentary evidence was admitted to support this. Tr. p. 51. All classes offered by ABC are offered free of charge and, accordingly, ABC does not place obstacles in the way of anyone who needs or would avail themselves of its services. Tr. pp. 26-27. No one is turned away from ABC, even if they do not come from the ABC. Tr. pp. 27-28. However, in balancing these characteristics favorable to assessing ABC as a charitable organization against the characteristics discussed above, including the lack of reliable financial information, I must conclude that ABC has failed to prove that it is a charitable organization.

For the above stated reasons, I recommend that the Department's determination denying the applicant a sales tax identification number be affirmed

ENTER:

Kenneth J. Galvin

December 5, 2001